



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 24, 1998

Mr. Lou Bright
General Counsel
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

OR98-2858

Dear Mr. Bright:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 119925.

The Texas Alcoholic Beverage Commission (the "commission") received an open records request for "all information regarding [the commission's] investigation into the October 26, 1997 Thomas Martindale incident." You inform us, however, that the only responsive records held by the commission were generated by the Austin Police Department during the course of that agency's investigation of a fatal automobile accident.¹ You state that the commission has released some responsive information to the requestor. You have asserted no interest on behalf of the commission for withholding the remaining information at issue, but rather contend that because the requested information relates to pending criminal litigation, the information may be withheld to protect the prosecutorial interests of the Travis County District Attorney.

In this type of situation, this office requires an affirmative representation from the prosecuting attorney representing the State of Texas in the litigation that he or she wants the

¹Thus, it does not appear that section 5.47 of the Alcoholic Beverage Code is applicable here. Section 5.47 makes public "[r]ecords of all violations of this code by permittees and licensees, records introduced and made public at hearings, and decisions resulting from the hearings relating to the violations."

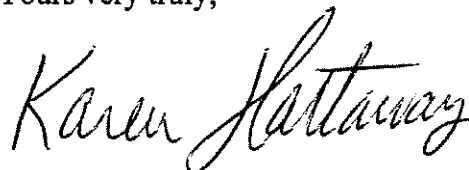
requested information withheld from disclosure. You have provided us with a letter from the assistant district attorney prosecuting this case, requesting that the commission withhold the submitted information from disclosure pursuant to section 552.108. Therefore, we will consider this section 552.108 claim.

Section 552.108(a)(1) of the Government Code excepts from required public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Because the assistant district attorney has informed us that the records at issue pertain to a pending criminal prosecution, we conclude that she has met her burden of establishing that the release of the requested information at this time could interfere with law enforcement or prosecution. The commission therefore may withhold most of the information at issue at this time pursuant to section 552.108(a)(1).

Section 552.108 does not, however, except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). The commission therefore must release these types of information in accordance with *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) if it has not already done so.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Karen Hattaway". The signature is written in a cursive, flowing style.

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/RWP/mjc

Ref.: ID# 119925

Enclosures: Submitted documents

cc: Ms. Deborah Powell
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(w/o enclosures)